THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 24931 of 2006

O r d e r:

By this writ petition, the petitioner seeks a Writ of Mandamus, declaring the proceedings dated 25.11.2004, issued by the 3rd respondent, to the extent of reducing the pay of the petitioner by two increments with cumulative effect, as illegal, arbitrary and violative of the principles of natural justice.

The petitioner was appointed as Driver in APSRTC on 26.12.1995, and while he was working as such, the petitioner states that he could not attend to duties from 20.08.2001 as he fell ill. The petitioner states that despite his sending medical certificates, justifying his absence, the 1st respondent, namely the Depot Manager, vide proceedings dated 09.03.2002, removing him from service. The petitioner states that the proceedings referred to in the proceedings dated 09.03.2002, namely the report of the TTI, share sheet, three letters of Assistant Manager, enquiry report, show cause notice of removal and the undelivered cover, in fact, were not received by him, for as he was sick, his family members shifted the residence and he could not inform of the change of address to the respondents. Assailing the order of removal, the petitioner preferred appeal to the 2nd respondent, namely the Divisional Manager, who vide proceedings dated 21.02.2002, set aside the order of removal, and ordered reinstatement of the petitioner into service, but as a measure of punishment, ordered reduction of pay of the petitioner by two incremental stages for a period of two years which have the effect of postponing his future increments, and

treated the period from the date of removal to the date of reporting for duty on reinstatement as “not on duty” for the purpose of leave and increments. Aggrieved thereby, the petitioner preferred review before the 3rd respondent, namely the Regional Manager, who by reason of the impugned order, rejected the review.

The learned counsel for the petitioner submitted that the absence of the petitioner for duties is not intentional or wanton, it was due to his falling sick, and though the petitioner sent medical certificates, which certified about his sickness, yet the 1st respondent, passed order of his removal from service. He submitted that though the 2nd respondent has set aside the order of removal passed by the 1st respondent, yet he has committed an error imposing punishment of reduction in two increments, and treating the period from the date of removal till the date of reporting to duty as “not on duty” for the purpose of leave and increments, and the 3rd respondent has also committed an error in upholding the punishment imposed by the 2nd respondent while setting aside the order of the 1st respondent. He submitted that the punishment imposed by the 2nd respondent in appeal, as confirmed by the 3rd respondent in review, is severe and certainly not proportionate to the charges leveled against him, and prayed that the impugned order be set aside and the writ petition be allowed as prayed for.

On the other hand, the learned Standing Counsel for the respondents-APSRTC submitted that the 1st respondent, based on the enquiry report, which reported that the charges leveled against the petitioner are proved, removed the petitioner from service. Though the 1st respondent passed order of removal, yet considering the short length of service put in by the petitioner, the

2nd respondent with a view to give him an opportunity, took a lenient view by along the appeal and setting aside the order of removal, and since the charges were held proved, the 2nd respondent as a measure of punishment, ordered reduction of pay by two incremental stages, which shall have effect on future increments and treated the period from the date of his removal from service till the date of his reporting to duty as “not on duty” for the purpose of leave and increments. Since the 2nd respondent has taken a lenient view and inflicted a lesser punishment, the 3rd respondent refused to interfere in review, and confirmed the orders of the 2nd respondent, and no interference is called for therewith. He submitted that considering the nature of proved charges, the lesser punishment imposed by the 2nd respondent as confirmed by the 3rd respondent, cannot be said to be severe or disproportionate, and prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

Though the petitioner contends that his absence for duties was due to his sickness and that he had even sent medical certificates, justifying his absence, the fact remains, as is evident from the orders passed by the respondents, no such medical certificates were received by the respondents, and in the absence of any evidence produced by the petitioner, the Enquiry Officer concluded that the absence of the petitioner was unauthorized.

Though the petitioner contends that the proceedings/letters/notices/enquiry report referred to in the order dated 09.03.2001 of the 1st respondent were not service on him, the fact remains, they having been sent to the residential address of the

petitioner were returned unserved. Inasmuch as they could not be served on the petitioner, they were exhibited on the notice board of the respondents, and despite that, the petitioner failed to submit his reply to the notices and also failed to appear for enquiry, and in such circumstances, the Enquiry Officer, based on the material available before him, submitted his report holding that the charges leveled against the petitioner are proved.

Even assuming the petitioner could not attend to duties because of his sickness, yet he being an employee of the respondents, cannot absolve himself of his responsibility to send leave letters either by himself or through his family members. Further, even if he had sent the letter, it was his duty to verify whether leave was sanctioned to him, based on such medical certificates. As the petitioner failed to intimate about his absence, the respondents in the absence of any information as to his absence, initiated departmental action. May be, the family members of the petitioner had shifted to a different house while he was sick, but it is the duty of the petitioner to keep informed the respondents of the change in the residential address. As the petitioner failed to inform the change of his residential address, the respondents sent all the notices to his last known addressed and as they all returned unserved, the enquiry was concluded based on the material on record, which held that the charges leveled against the petitioner proved. The petitioner being responsible for not furnishing his address of leave, cannot contend that the proceedings referred to in the order of the 1st respondent were not served on him, and more so when the records disclose that all of them were sent to the last known address of the petitioner and were returned unserved.

A reading of the impugned orders would disclose that because of the unauthorized absence of the petitioner, there was dislocation of services, resulting in loss to the respondents. The Enquiry Officer found that the petitioner was a frequent absentee and held that the charges leveled against the petitioner are proved. Though the 1st respondent based on the enquiry report, removed the petitioner from service holding that the petitioner is unprofitable to the organization, yet the 2nd respondent considering the short length of service put in by the petitioner, with a view to give one more opportunity, took a lenient view set aside the order of the 1st respondent and ordered reinstatement of the petitioner into service, but however, having regard to the proved charges, felt that some punishment should be imposed, and accordingly imposed reduction of two incremental stages and treated the period from the date of removal to the date of reporting to duty as “not on leave”, and considering the lenient view taken by the 2nd respondent, the 3rd respondent, by reason of the impugned order, refused to interfere with the same, and no interference is called for therewith.

Considering the nature of proved charges, namely unauthorized absence, which had the effect of disrupting the services of the APSRTC and causing loss to them, I am of the considered opinion that the punishment imposed by the 2nd respondent while setting aside the order of the 1st respondent removing the petitioner from service, as confirmed by the 3rd respondent by reason of the impugned order, can neither be said to be severe nor disproportionate to the proved charges, warranting it modification by this Court.

The writ petition is devoid of merit, and the same is

accordingly dismissed. No costs.

N.V. RAMANA, J.

Dated: 13th December, 2006.
KSR